

COMMONWEALTH OF MASSACHUSETTS**SUFFOLK, ss.****Building Code Appeals Board
Docket No. 10-845**

Aspen Square Management,)
Appellant)
v.)
Town of Agawam,)
Appellee)

BOARD'S RULING ON APPEAL**Introduction**

This matter came before the State Building Code Appeals Board ("Board") on the Appellant's appeal filed pursuant to M.G.L. c. 143, § 100 and 780 CMR 122.1. In accordance with 780 CMR 122.3 and 105 CMR 410.840(c), the Appellant asks the Board to grant a variance from 105 CMR 410.480 and M.G.L. c. 143, § 3R for Country Manor Apartments located at 59-63 South Westfield St. Feeding Hills, MA ("Apartment Complex").

A hearing relative to this request for variance was convened on February 16, 2010 and was conducted pursuant to 801 CMR 1.02 and M.G.L. c. 30A, §§ 10 and 11. The Appellant's representative, Patrick Keene, was present and duly sworn. For the following reasons, the Appellant's request for a variance is hereby **ALLOWED**.

Exhibits

The following Exhibits were entered into evidence at the hearing on this matter without objection and reviewed by the Board.

- Exhibit 1: State Building Code Appeals Board Appeal Application form filed by the Appellant, dated January 29, 2010.
- Exhibit 2: Pictures and descriptions of the alternate locking mechanism proposed by the Appellant in place of the equipment required by the code.
- Exhibit 3: Notice of hearing sent to the Appellant, the Building Commissioner of Town of Agawam ("Commissioner"), and Chief David Pisano on February 9, 2010.
- Exhibit 4: State Building Code Appeals Board Service Notice, dated January 29, 2010.
- Exhibit 5: Letter from the Commissioner notifying the Appellant that the apartment buildings were in violation of M.G.L. c. 143, § 3R, dated January 15, 2010.

Exhibit 6: Letter from the Appellant to the Board requesting a variance from M.G.L. c. 143, § 3R.

Findings of Fact

Based on the credited testimony of the witness and the plans and documents submitted, the Board finds these facts:

1. The property at issue is a garden style Apartment Complex with apartment buildings with 6 units each, built in 1968.
2. The Agawam Fire Department conducted a Fire Investigation Report and inspection on January 11, 2010, and discovered that the Appellant was in violation of M.G.L. c. 143, § 3R. (Exhibit 5)
3. The Appellant filed an appeal to request a variance. (Exhibit 1)
4. Notice of hearing was sent to the Appellant on February 9, 2010. (Exhibit 3)
5. All apartment doors have privacy style Deadbolt closures. (Exhibit 6)
6. There are key control procedures following the best practices of the National Multi-Family Housing Council (NMHC). (Exhibit 6)
7. There is 24-hour, 7-day emergency pager response for resident emergencies. (Exhibit 6)
8. The grounds and parking lots are well-lit. (Exhibit 6)
9. The common hallways are lit 24/7. (Exhibit 6)
10. Retrofitting the buildings with electronic strike-plate locking mechanisms could cost up to 800-1000 dollars each.
11. The Appellant proposed installing 100% mechanical heavy duty push button locks as an alternative to the electronic strike-plate locking mechanisms. (Exhibit 2)

Analysis

The issue in this case is whether to grant the Appellant a variance from M.G.L. c. 143, § 3R. Pursuant to M.G.L. c. 143, § 3R, “at least one of the doors of the main common entryway into every apartment house having more than three shall be so designed or equipped as to close and lock automatically with a lock, including a lock with an electrically-operated striker mechanism.” However, the statute also allows the Board to “waive any of the requirements of this section in appropriate cases in which, in its opinion, other security measures are in force which adequately protect the residents of such apartment house.”¹ M.G.L. c. 143, § 3R.

Here, the Appellant’s buildings lack the required electrically-operated striker mechanisms, but the apartment complex has a 24-hour emergency security. Furthermore, the proposed mechanical lock system is an acceptable alternative to the electrically-operated striker mechanism.

¹ Code of Massachusetts Regulations Title 105 Section 410.480 (c) provides the same requirements as M.G.L. c. 143, § 3R, and 105 CMR 410.840 (c) states that “a variance from 105 CMR 410.480 may be granted only by the Massachusetts State Building Code Commissioner when in its opinion, other security measures are in force which adequately protect the resident(s) of such dwelling.”

Conclusion and Order

There are adequate security measures to protect the residents, and requiring apartment buildings, which were built in 1968, to be in compliance with M.G.L. c. 143, § 3R places too much financial burden on the Appellant. Accordingly, the Appellant's request for a variance is hereby **ALLOWED**.

SO ORDERED.

By the Board:



Alexander MacLeod

William Middlemiss

Douglas Semple

DATED: August 5, 2010

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of competent jurisdiction in accordance with Chapter 30A, Section 14 of the Massachusetts General Laws, within 30 days of receipt of this decision.

A true copy attest, dated: _____

Patricia Barry, Clerk

All hearings are audio recorded. The digital recording (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing. Copies of the recording are available from the Board for a fee of \$5.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

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